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WELLS FARGO BANK, N.A.

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10 UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
11

12 JON LEVIN,

13 Plaintiff,

14 vs.

15 WELLS FARGO BANK, N.A.

16 Defendant.  
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Case No.

**DEFENDANT WELLS FARGO  
BANK, N.A.'S NOTICE OF  
REMOVAL OF ACTION  
PURSUANT TO 28 U.S.C §§ 1332,  
1441 AND 1446 (DIVERSITY  
JURISDICTION AND CLASS  
ACTION FAIRNESS ACT OF 2005)**

[Orange County Case No.  
30-2022-01274819-CU-OE-CXC]

Complaint Filed: August 11, 2022



1           3.       On September 27, 2019, Wells Fargo answered the Complaint, by  
2 filing a general denial in the Orange County Superior Court. A true and correct  
3 copy of the Answer to the Complaint is attached hereto as **Exhibit “C.”** Exhibits  
4 “A” through “C” represent all pleadings and process filed in this action through the  
5 date of removal.

6           **DIVERSITY JURISDICTION UNDER 28 U.S.C. SECTION 1332(a)**

7           4.       **Plaintiff’s Citizenship:** Plaintiff is, and at all times since the  
8 commencement of this action has been, a citizen and resident of the State of  
9 California. To establish citizenship for diversity purposes, a natural person must be  
10 both (a) a citizen of the United States and (b) a domiciliary of one particular state.  
11 *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983). Residence  
12 is *prima facie* evidence of domicile. *State Farm Mut. Auto Ins. Co. v. Dyer*, 19 F.3d  
13 514, 520 (10th Cir. 1994). Plaintiff has been a citizen of California at all relevant  
14 times.<sup>1</sup> Specifically, Plaintiff owns a primary residence in California, has a  
15 registered motor vehicle with California, is registered to vote in California, and pays  
16 taxes in California. Plaintiff therefore is, or was at the institution of this civil action,  
17 a citizen of California.

18           5.       **Wells Fargo’s Citizenship:** Wells Fargo is not a citizen of California.  
19 Pursuant to 28 U.S.C. section 1348, Wells Fargo Bank, N.A., as a national banking  
20 association, is a citizen of the state where its main office is “located.” As held by  
21 the Ninth Circuit, Wells Fargo Bank, N.A., with its main office located in Sioux  
22 Falls, South Dakota, is a citizen of South Dakota. *See Rouse v. Wachovia*  
23 *Mortgage, FSB*, 747 F.3d 707, 711 (9th Cir. 2014) (holding that “Wells Fargo is a  
24 citizen only of South Dakota, where its main office is located”). Accordingly, Wells  
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26           <sup>1</sup>       Complaint ¶ 1 (“The Plaintiff . . . is a natural person who, at all times relevant  
27 to these proceedings, has been residing in Huntington Beach, California and  
28 working in Irvine, California.”).

1 Fargo Bank, N.A. is only a citizen of South Dakota and not California for diversity  
2 purposes. Thus, complete diversity exists here..

3 **AMOUNT IN CONTROVERSY EXCEEDS \$75,000**

4 6. This action is a civil action between citizens of different states and the  
5 amount in controversy on Plaintiff's individual claims exceeds \$75,000, exclusive of  
6 interest and costs, and accordingly, this Court has original jurisdiction under 28  
7 U.S.C. sections 1332(a).

8 7. "[A] defendant's notice of removal need include only a plausible  
9 allegation that the amount in controversy exceeds the jurisdiction threshold." *Dart*  
10 *Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014). Wells  
11 Fargo is not obliged to "research, state, and prove the plaintiff's claims for  
12 damages." *Singer v. State Farm Mut. Auto Ins. Co.*, 116 F.3d 373, 377 (9th Cir.  
13 1997); *Conrad Assoc. v. Hartford Accident & Indem. Co.*, 994 F. Supp. 1196, 1198  
14 (N.D. Cal. 1998). Further, a removing defendant need not set forth evidence  
15 establishing the amount in its notice of removal. *See Dart Cherokee*, 135 S.Ct. at  
16 554; *Arias v. Residence Inn by Marriot*, 936 F.3d 920, 922 (9th Cir. 2019) (holding  
17 that "a removing defendant's notice of removal 'need not contain evidentiary  
18 submissions' but only plausible allegations of the jurisdictional elements"), *citing*  
19 *Ibarra v. Manheim Investments, Inc.*, 775 F.3d 1193, 1197 (9th Cir. 2015). Wells  
20 Fargo can establish the amount in controversy by the allegations in the Complaint,  
21 or by pleading facts in its notice of removal that demonstrate that the amount placed  
22 in controversy by Plaintiff exceeds the jurisdictional minimum. *Singer*, 116 F.3d at  
23 377; *Conrad Assoc.*, 994 F. Supp. at 1198.

24 8. The amount in controversy for purposes of diversity jurisdiction is the  
25 total "amount at stake in the underlying litigation." *Theis Research, Inc. v. Brown &*  
26 *Bain*, 400 F.3d 659, 662 (9th Cir. 2005). Moreover, "the amount in controversy is  
27 simply an *estimate* of the total amount in dispute, not a prospective assessment of  
28 defendant's liability." *Lewis v. Verizon Commc'n, Inc.*, 627 F.3d 395, 400 (9th Cir.

1 2010) (emphasis added). “In assessing the estimated amount in controversy, a court  
2 must assume that the allegations of the complaint are true and assume that a jury  
3 will return a verdict for the plaintiff on all claims made in the complaint.” *Sasso v.*  
4 *Noble Utah Long Beach, LLC*, No. CV 14-09154-AB AJWX, 2015 WL 898468, at  
5 \*3 (C.D. Cal. Mar. 3, 2015).

6 9. **Alleged Unpaid Wages:** Plaintiff alleges that Wells Fargo failed to  
7 pay him commissions for loans that closed 30 days after his separation of  
8 employment for a total of \$32,000.<sup>2</sup> In addition, Plaintiff claims that Wells Fargo  
9 failed to pay him a \$32,900 Net Loyalty Bonus and a \$26,250 annual purchase  
10 bonus upon separation.<sup>3</sup> These figures alone (\$91,150 in total) exceed \$75,000 and  
11 therefore the amount in controversy is easily met here. *See Chavez v. JPMorgan*  
12 *Chase & Co.*, 888 F.3d 413, 416 (9th Cir. 2018) (finding that the amount in  
13 controversy “easily exceeds” \$75,000 when the plaintiff’s salary was \$39,000 per  
14 year and she would have continued working if she had not been terminated).

15 10. **Waiting Time Penalties.** The Complaint also alleges that Plaintiff is  
16 entitled to waiting time penalties under Labor Code section 203 for Wells Fargo’s  
17 alleged failure to pay Plaintiff all of his earned wages prior to his termination.<sup>4</sup>  
18 Labor Code section 203 provides that if an employer willfully fails to pay wages to  
19 a terminated employee, “the wages of the employee shall continue as a penalty from  
20 the due date thereof at the same rate until paid or until an action therefor is  
21 commenced; but the wages shall not continue for more than 30 days.” Cal. Labor  
22 Code § 203(a). At the time of his separation, Plaintiff earned \$12 per hour  
23 (exclusive of non-hourly pay). Pursuant to Labor Code section 203, Plaintiff seeks  
24 to recover 30 days of additional wages or approximately **\$2,880** (\$12.00 x 8 x 30).

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26 <sup>2</sup> Complaint ¶ 2

27 <sup>3</sup> Complaint ¶¶ 24-25.

28 <sup>4</sup> Complaint ¶ 42.

1           11.     **Attorney’s fees:** In addition, the Complaint alleges that Plaintiff is  
2 entitled to recover attorney’s fees.<sup>5</sup> A prevailing party on wage claims may be  
3 awarded attorney’s fees. Cal. Labor Code § 218.5. Requests for attorney’s fees  
4 should be taken into account in ascertaining the amount in controversy. *See Galt*  
5 *G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998) (claims for attorney’s  
6 fees are to be included in amount in controversy, regardless of whether award is  
7 discretionary or mandatory). The Ninth Circuit has clarified that this must include  
8 all attorney’s fees ***likely to be incurred through trial of an action***. *See Fritsch v.*  
9 *Swift Transp. Co. of Ariz.*, 899 F.3d 785, 794 (9th Cir. 2018) (“Because the law  
10 entitles Fritsch to an award of attorney’s fees if he is successful, such future  
11 attorney’s fees are at stake in the litigation, and must be included in the amount in  
12 controversy. Therefore, the district court’s conclusion that, as a matter of law, the  
13 amount in controversy included only the \$150,000 in attorney’s fees incurred up to  
14 the time of removal and could not include any future fees, was incorrect.”). One  
15 court in the Central District of California has opined that a reasonable rate for an  
16 attorney would be at least \$300 and a reasonable number of hours would be at least  
17 100 – 300 hours. *Sasso v. Noble Utah Long Beach, LLC*, No. CV 14-09154-AB  
18 AJWX, 2015 WL 898468, at \*1 (C.D. Cal. Mar. 3, 2015). Those assumptions  
19 would lead to an attorney’s fee award of between \$30,000 and \$90,000. *Id.* If  
20 Plaintiff litigated this case through trial and prevailed on his individual claims, it is  
21 reasonable to assume that the recovery of fees itself would exceed \$75,000.

22           12.     Based on the foregoing, there is ample evidence that the amount in  
23 controversy, based on the totality of Plaintiff’s individual claims and prayer for  
24 relief, significantly exceeds \$75,000.

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28     <sup>5</sup>     *See* Complaint generally and prayer for relief.

**MINIMUM DIVERSITY EXISTS UNDER CAFA**

13. The Court also has original jurisdiction of this action under the Class Action Fairness Act of 2005 (“CAFA”), codified in relevant part in 28 U.S.C. § 1332(d)(2). Specifically, this action is removable, pursuant to the provisions of 28 U.S.C. § 1441(a), as the amount in controversy exceeds \$5 million, exclusive of interest and costs, and is a class action in which at least one class member is a citizen of a state different from that of at least one defendant.

14. To satisfy CAFA’s diversity requirement, a party seeking removal need only show that minimal diversity exists – i.e., that one putative class member is a citizen of a different state from that of one defendant. 28 U.S.C. § 1332(d)(2); *see also United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int’l Union, AFL-CIO, CLC v. Shell Oil Co.*, 602 F.3d 1087, 1090-91 (9th Cir. 2010) (finding that to achieve its purposes, CAFA provides expanded original diversity jurisdiction for class actions meeting the minimal diversity requirement). Not only does minimal diversity exist, but complete diversity of citizenship exists because Plaintiff is a citizen of California while Defendants are citizens of other states (Georgia and Delaware).

15. As noted above in Paragraph 4, Plaintiff is, and at all times relevant to this action was, a California citizen. Accordingly, Plaintiff qualifies under CAFA as a citizen of California.

16. As noted above in Paragraph 5, Wells Fargo is a citizen of South Dakota. Accordingly, minimal diversity exists here.

**WELLS FARGO’S REMOVAL IS TIMELY AS IT HAS FILED ITS  
REMOVAL WITHIN 30 DAYS OF BEING SERVED AND HAS NEVER  
BEEN PRESENTED WITH A PLEADING OR OTHER PAPER THAT HAS  
AFFIRMATIVELY REVEALED THAT THE AMOUNT IN  
CONTROVERSY EXCEEDS \$5,000,000**

17. 28 U.S.C. Section 1446(b) provides two separate triggers for CAFA’s 30-day deadline for removal. Section 1446(b)(1) requires the notice of removal to be filed 30 days after the defendant receives the initial pleading, but Section

1 1446(b)(3) provides that “if the case stated by the initial pleading is not removable”  
2 the defendant can remove within 30 days after receipt of “a copy of an amended  
3 pleading, motion, order or *other paper* from which it may first be ascertained that  
4 the case is one which is or has become removable.” If a plaintiff’s complaint,  
5 pleadings, or other papers served on or received by a defendant do not affirmatively  
6 reveal on their face that the amount in controversy exceeds \$5,000,000, Section  
7 1446(b)’s two separate 30-day removal periods *never* begin to run, and a defendant  
8 in a CAFA case may remove the case “at any time.” *Kuxhausen v. BMW Fin.*  
9 *Services NA LLC*, 707 F.3d 1136, 1139 (9th Cir. 2013); *see also Roth v. CHA*  
10 *Hollywood Med. Ctr., LP*, 720 F.3d 1121, 1125-26 (9th Cir. 2013) (“A CAFA case  
11 may be removed **at any time**, provided that neither of the two thirty-day periods  
12 under § 1446(b)(1) and (b)(3) has been triggered.”) (citations omitted) (emphasis  
13 added); *Harris v. Bankers Life & Cas. Co.*, 425 F.3d 689, 694 (9th Cir. 2005)  
14 (holding that for either 30-day period to be triggered, the ground for removal must  
15 be shown in “the four corners of the applicable pleadings” or “from the face of the  
16 document”).

17 18. Further, this “bright-line” requirement makes clear that the defendant  
18 has no obligation to investigate or develop additional information as to  
19 removability: “[N]otice of removability under § 1446(b) is determined through  
20 examination of the four corners of the applicable pleadings, not through subjective  
21 knowledge or a duty to make further inquiry” by the defendant. *Harris*, 425 F.3d at  
22 694; *see also Kuxhausen*, 707 F.3d at 1141 (“[The defendant] was not obligated to  
23 supply information which [the plaintiff] had omitted.”); *Roth*, 720 F.3d at 1125  
24 (“even if a defendant could have discovered grounds for removability through  
25 investigation, it does not lose the right to remove because it did not conduct such an  
26 investigation”). In other words, only a pleading or other paper served on or received  
27 by the defendant may trigger either 30-day period, not the defendant’s own  
28 knowledge of jurisdictional information. *See Kuxhausen*, 707 F.3d at 1141 n. 3 (“It

1 bears repeating that whether a defendant can establish that federal jurisdiction exists  
2 and the question of when the thirty-day time period begins are not two sides of the  
3 same question.”); *see also Vigil v. Waste Connections, Inc.*, 2015 WL 627877, at \*2  
4 (E.D. Cal. Feb. 11, 2015) (despite the fact that defendant already knew the  
5 jurisdictional fact that the parties were diverse, removal was timely when filed  
6 within 30 days of plaintiffs’ discovery response stating their citizenship,  
7 “[r]egardless of when [defendant] learned the parties were diverse”).

8       19. Here, as set forth above, Wells Fargo has removed the case within 30  
9 days of service and Plaintiff has not otherwise presented a pleading or other paper  
10 affirmatively revealing that the amount in controversy exceeds \$5,000,000.  
11 Accordingly, Wells Fargo’s removal is timely.

12               **AMOUNT IN CONTROVERSY EXCEEDS \$5 MILLION**

13       20. Pursuant to CAFA, the amount in controversy is satisfied when the  
14 aggregated claims of the individual members in a class action exceed the sum of \$5  
15 million. *See* 28 U.S.C. § 1332(d)(6). Without making any admission of liability or  
16 damages with respect to any aspect of this case, or to the proper legal test(s)  
17 applicable to Plaintiff’s claims, the alleged amount in controversy in this class  
18 action exceeds, in the aggregate, \$5,000,000. This conclusion is based on the  
19 known information set forth in the paragraphs below. The Ninth Circuit recently  
20 reaffirmed that, in considering amount in controversy, the Court may rely upon the  
21 defendant’s plausible assumptions consistent with the pleading in the operative  
22 complaint in calculating the amount in controversy, even where the defendant denies  
23 it is liable at all. *See Arias*, 963 F.3d at 927 (reversing remand order and finding  
24 that defendant had satisfied amount in controversy requirement through reasonable  
25 assumptions: “assumptions made as part of the defendant’s chain of reasoning need  
26 not be proven; they instead must only have ‘some reasonable ground underlying  
27 them.’”).

21. **The proposed class.** Plaintiff worked for Wells Fargo as a HMC in Irvine until his separation of employment on December 17, 2019.<sup>6</sup> Plaintiff's proposed class definition covers all HMCs<sup>7</sup> who did not receive commissions and/or bonus compensations earned prior to their separation of employment from Wells Fargo between August 11, 2018 and the present. Based on this class definition, the class consists of at least 900 HMCs who worked in California and were separated during the relevant time period.

22. **Unpaid Wages Arising Out of Failure To Pay Net Loyalty Bonus.** Plaintiff asserts that Wells Fargo failed to pay him and other HMCs their Net Loyalty Bonus upon their separation of employment pursuant to the terms of the applicable incentive compensation plan. From Wells Fargo's own investigation of payroll records, it appears that the average Net Loyalty bonus paid to HMCs is approximately \$25,000. If each separated HMC were entitled to the average Net Loyalty Bonus upon his or her separation, that would translate into total unpaid wages of **\$22,500,000** (900 X \$25,000).

23. **Waiting Time Penalties.** Plaintiff asserts that all class members were willfully and systematically underpaid wages as a result of Wells Fargo's failure to pay commissions and/or bonuses upon separation, which would entitle all former employees whose employment terminated on or after August 11, 2019 to 30 days of waiting time penalties measured at 8 hours per day. *See Mamika v. Barca*, 68 Cal. App. 4th 487 (1998) ("day's pay" under Section 203 takes into account typical hours employee worked in a day multiplied by the hourly rate). A total of approximately 570 HMCs terminated their employment on or after August 11, 2019. Assuming 30

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<sup>6</sup> Complaint ¶ 1.

<sup>7</sup> Plaintiff did not specify what types of mortgage consultants were in the class. Wells Fargo employs Private Mortgage Bankers ("PMBs") that are functionally the same as HMCs and are subject to the identical incentive compensation plans. Thus, the PMBs are included in the class size estimate.

1 days of 8 hours per day in waiting time penalties for each former HMC at the hourly  
2 rate of \$12 per hour yields total waiting time penalties of **\$1,641,600** (\$12 x 8 hours  
3 per day x 30 days). This is actually a low estimate since the minimum wage has  
4 been above \$12 per hour in the most recent years and Wells Fargo has adjusted its  
5 hourly rate for HMCs accordingly.

6       24. **Attorney's fees.** Lastly, although potential damages and penalties  
7 amount to significantly more than \$5 million standing alone on the unpaid wages  
8 and waiting time penalties claims, the Complaint also alleges that class members are  
9 entitled to recover attorney's fees. Recent Ninth Circuit authority has clarified that,  
10 in evaluating amount in controversy, the calculation must include all attorney's fees  
11 likely to be incurred *through trial of an action* including in CAFA removals. *See*  
12 *Arias*, 936 F.3d at 927-28 (noting that it was error for court to refuse to consider  
13 likely attorney's fees *through trial* in evaluating CAFA amount in controversy).  
14 Attorney's fees are typically set at 25% of the gross recovery in a wage/hour class  
15 action, although they can be higher if justified by a lodestar calculation of  
16 reasonable hourly rate times the amount of reasonable hours expended. *Fritsch*, 899  
17 F.3d at 796, n. 6 (noting that 25% value, while not dispositive in every case, is the  
18 usual benchmark). To be conservative, setting fees at 25% of the recovery of the  
19 amounts above would yield a total of **\$6,035,400** in attorney's fees.

20       25. Adding up the above damages, penalties, and attorney's fee figures  
21 from above yields a total amount in controversy in excess of **\$30 million** using  
22 plausible estimates derived from the specific allegations in the Complaint that are  
23 properly used to determine amount in controversy for purposes of CAFA. *See*  
24 *Arias*, 936 F.3d 920; *Ibarra*, 775 F.3d at 1197-99 (amount in controversy is based  
25 on reasonable assumptions supported by evidence). Accordingly, Wells Fargo has  
26 easily established the amount in controversy requirement to support federal  
27 jurisdiction here.

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1 Dated: September 27, 2022

2 SHEPPARD, MULLIN, RICHTER & HAMPTON

3  
4 By /s Paul Berkowitz

5 PAUL BERKOWITZ  
6 Attorneys for Defendant  
7 WELLS FARGO BANK, N.A.  
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